

Effective 5/12/2015

11-42-106 Action to contest assessment or proceeding -- Requirements -- Exclusive remedy -- Bonds and assessment incontestable.

- (1) A person who contests an assessment or any proceeding to designate an assessment area or levy an assessment may commence a civil action against the local entity to:
 - (a) set aside a proceeding to designate an assessment area; or
 - (b) enjoin the levy or collection of an assessment.
- (2)
 - (a) Each action under Subsection (1) shall be commenced in the district court with jurisdiction in the county in which the assessment area is located.
 - (b) An action under Subsection (1) may not be commenced against and a summons relating to the action may not be served on the local entity more than 60 days after the effective date of the:
 - (i) designation resolution or designation ordinance, if the challenge is to the designation of an assessment area;
 - (ii) assessment resolution or ordinance, if the challenge is to an assessment; or
 - (iii) amended resolution or ordinance, if the challenge is to an amendment.
- (3)
 - (a) An action under Subsection (1) is the exclusive remedy of a person who:
 - (i) claims an error or irregularity in an assessment or in any proceeding to designate an assessment area or levy an assessment; or
 - (ii) challenges a bondholder's right to repayment.
 - (b) A court may not hear any complaint under Subsection (1) that a person was authorized to make but did not make in a protest under Section 11-42-203 or at a hearing under Section 11-42-204.
 - (c)
 - (i) If a person has not brought a claim for which the person was previously authorized to bring but is otherwise barred from making under Subsection (2)(b), the claim may not be brought later because of an amendment to the resolution or ordinance unless the claim arises from the amendment itself.
 - (ii) In an action brought pursuant to Subsection (1), a person may not contest a previous decision, proceeding, or determination for which the service deadline described in Subsection (2)(b) has expired by challenging a subsequent decision, proceeding, or determination.
- (4) An assessment or a proceeding to designate an assessment area or to levy an assessment may not be declared invalid or set aside in part or in whole because of an error or irregularity that does not go to the equity or justice of the proceeding or the assessment meeting the requirements of Section 11-42-409.
- (5) After the expiration of the 60-day period referred to in Subsection (2)(b):
 - (a) assessment bonds and refunding assessment bonds issued or to be issued with respect to an assessment area and assessments levied on property in the assessment area become at that time incontestable against all persons who have not commenced an action and served a summons as provided in this section; and
 - (b) a suit to enjoin the issuance or payment of assessment bonds or refunding assessment bonds, the levy, collection, or enforcement of an assessment, or to attack or question in any way the legality of assessment bonds, refunding assessment bonds, or an assessment may not be commenced, and a court may not inquire into those matters.
- (6)

- (a) This section may not be interpreted to insulate a local entity from a claim of misuse of assessment funds after the expiration of the 60-day period described in Subsection (2)(b).
- (b)
 - (i) Except as provided in Subsection (6)(b)(ii), an action in the nature of mandamus is the sole form of relief available to a party challenging the misuse of assessment funds.
 - (ii) The limitation in Subsection (6)(b)(i) does not prohibit the filing of criminal charges against or the prosecution of a party for the misuse of assessment funds.

Amended by Chapter 396, 2015 General Session